

MEMORANDUM

TO: Members, Clark Fork Basin Water Management Task Force (Task Force)
FROM: Gerald Mueller
SUBJECT: Summary of the April 8, 2008 Task Force Meeting
DATE: April 10, 2008

Participants

The following people participated in the Task Force meeting:

Task Force Members:

Harvey Hackett	Bitterroot
Fred Lurie	Blackfoot Challenge
Nate Hall	Avista
Ted Williams	Flathead Lakers
Arvid ■Butch■ Hiller	Mountain Water
Holly Franz	PPL Montana
Marc Spratt	Flathead Conservation District/Flathead Chamber of Commerce
Matt Clifford	Clark Fork Coalition

Ex Officio Members

Senator Verdell Jackson	Senate District 5
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Public

Mike McLane	Montana Department of Fish, Wildlife and Parks (DFWP)
Mark Reller	Bonneville Power Administration (BPA)

Staff:

Curt Martin	DNRC
Gerald Mueller	Consensus Associates

Meeting Agenda

- February 4, 2008 Meeting Summary
- Updates
 - Hungry Horse Water Activities
 - Water Policy Interim Committee Bill Drafts
 - Task Force Budget
- Growing Communities Doctrine
- Water Supply and Growth in the Clark Fork Basin Conference
- Water Right System Policy Paper
- Public Comment
- Next Meeting

February 4, 2008 Meeting Summary

The Task Force made no change to the February 4, 2008 meeting summary.

Updates

Hungry Horse Water Activities - Curt Martin passed out copies of a letter sent by DNRC Director Mary Sexton to J. William McDonald, Pacific Northwest Regional Director of the Bureau of Reclamation (BOR). The letter officially notifies BOR of the state's intention to contract for water from Hungry Horse Reservoir. The letter requests that BOR modeling as a

part of the contracting process ■...consider the use of Hungry Horse water to offset the impacts of future consumption by domestic, municipal, and industrial users throughout the Clark Fork basin ultimately in the amount of 100,000 acre-feet per year. • A copy of the letter is attached below as Appendix 1.

Question - Does this letter bind the state to contracting for no more than 100,000 acre-feet from Hungry Horse?

Answer - No. This letter merely asks BOR to begin the contracting process by conducting a cost reallocation study.

Question - Is the state asking BOR to model Hungry Horse releases to achieve no change at Noxon Rapids?

Answer - At this point our request is a general one. The state is requesting a contract for 100,000 acre-feet of water from the reservoir for additional water consumption.

Question - What is the next step in the process?

Answer - BOR will conduct background studies necessary to assess the impact of the request on their operations of Hungry Horse. BOR staff has begun discussing modeling assumptions with DNRC staff at a low level.

Question - Will DNRC be communicating with the Confederated Salish and Kootenai Tribes about the studies?

Answer - The Compact Commission negotiations with the Tribes are on a separate but parallel course to this contracting request. Compact Commission staff, Governor's Office staff, Montana's members of the Northwest Power and Conservation Council (NPCC), DNRC staff, and DFWP staff meet regularly to discuss issues related to the compact negotiations, including the operation of Hungry Horse reservoir. The contracting effort and the compact negotiation are not mutually exclusive.

Question - In the contracting request for 100,000 acre-feet, is any water specifically allocated for the Tribes?

Answer - No.

Question - Has DNRC identified the timing and location of specific releases from Hungry Horse?

Answer - No.

Comment by Mark Reller - As a part of this contracting process, BOR will be required to consult with the federal fish management agencies under Section 7 of the Endangered Species Act concerning the Columbia basin anadromous fish stocks and bull trout listed as threatened or endangered species. BOR will also have to comply with the provisions of the National Environmental Policy Act (NEPA).

Question - Has the status of the biological opinion (BIOP) which the National Marine Fisheries Service (NMFS) must prepare for the listed anadromous fish species changed?

Answer by Mark Reller - NMFS may have requested and received another extension from Federal Judge Redden for producing the BIOP, but I am not sure. I believe it is due in May or June. Montana interests have been incorporated in the NPCC fish and wildlife program and in draft versions of the BIOP. Drafting of Hungry Horse would be limited to 10 feet in 80% of the years and to 20 feet in the other 20%. The top 20 feet of Hungry Horse contains about 400,000 acre-feet of water.

Question - As DNRC is deciding on modeling assumptions for the contracting effort, will it discuss them with the Task Force?

Answer - Yes, we will discuss them with the Task Force prior to conveying them officially to BOR. DNRC would also welcome members of the Task Force to participate in our more detailed discussions with BOR.

Task Force Action - Marc Spratt and Gerald Mueller volunteered to participate in the detailed discussions with DNRC. These discussions are not meant to take the place of a discussion of any modeling assumptions with the full Task Force.

Water Policy Interim Committee (WPIC) Bill Drafts - Gerald Mueller and Holly Franz reviewed the status of the WPIC bill drafts, all of which are available from WPIC's web site:

- LC5001, Accelerated Permitting Bill - WPIC is not planning to give further consideration to this bill. DNRC is considering a bill to amend HB 831, and has circulated a memo to WPIC explaining its proposed amendments, a draft of bill, and a redline version of HB831 showing the proposed DNRC changes. Copies of the proposed bill, including a red-line version of HB831, and the memo are included below in Appendix 2. DNRC will be posting its proposal on its web site and will seek comments from interested parties concerning the draft.
- LC5002, Notice of Intent to Drill Bill - No further consideration will be given to this bill draft.
- LC5003, Enforcement Bill - No further consideration will be given to this bill draft. Montana's Attorney General will be asked to report at the next WPIC meeting regarding plans he may have for water right enforcement.
- LC5004, Community Water and Sewer Incentive Bill - Myra Shults, an attorney who contracts with the Montana Association of Counties (MACO), convened a working group of some 22 people on April 1, 2008 to discuss both LC 5004 and LC5006. The group revised LC5004 and the revision is labeled LC5014 and is included below in Appendix 3. The group discussed but failed to reach agreement on exempt wells.
- LC5005, MDT Reservation Bill - This bill will be reconsidered at the next meeting. Any alternatives that would meet the Montana Department of Transportation's objectives will be considered. Rep. McChesney, who is retired MDT administrator, supports LC5005.
- LC5006, The Subdivision and Water Right Disconnect Bill - The Shults working group agreed that the time is not ripe for further consideration of this bill.
- LC5007, Ground Water Data Gathering Bill - WPIC supports this bill draft.
- LC5008, Issue Remarks Bill - No further consideration will be given to this bill draft.
- LC5009, Aquifer Discharge Permit Bill - This bill, which requires that a discharge permit be obtained for an aquifer recharge plan or a mitigation plan, has apparently not yet been discussed by WPIC.

Comment - DNRC is considering introducing a bill that would modify the current 35 gallons per minute, 10 acre-feet per year ground water permit exemption.

Task Force Budget - Gerald Mueller and Curt Martin reported on this topic. Mr. Mueller stated that he was contacted by Rich Moy, DNRC Water Management Bureau Chief, about the level of the budget level to include in DNRC's budget request. Mr. Mueller recommended keeping the current amount, \$45,000 per year for the next biennium. Mr. Martin then summarized the Task Force's 2008 Fiscal Year Budget as follows:

Funding:	
OTO Appropriation	\$45,000
2006 Base Appropriation	<u>12,000</u>
Total	\$57,000
Expenditures	

Invoices Paid	\$13,500
Remaining Facilitator Contract	10,000
Remaining Conference Contract	4,200
Remaining Meeting Expenses	<u>1,000</u>
Total	\$28,000
Uncommitted Balance	\$28,300

Both Mr. Martin and Mr. Mueller stated that they were unaware that the Task Force budget included the \$12,000 annual amount labeled as 2006 Base Appropriation. This amount was the annual funding for the Task Force for the previous biennium.

Task Force Action - The members of the Task Force tentatively agreed to a possible expenditure of this year's uncommitted balance and a tentative outline of its budget for the next biennium.

FY2008 Uncommitted Balance

The Task Force will ask DNRC to commit funds for a watershed roundtable aimed at providing the opportunity for all watershed groups in the Clark Fork River basin to share information about their current basin or subbasin scale projects and funding requests.

Tentative FY2008-2009 Biennium Annual Budget Outline

<i>Facilitator Services</i>	<i>\$20,000</i>
<i>Technical and Policy Conferences</i>	<i>16,000</i>
<i>Meeting Expenses</i>	<i>2,000</i>
<i>Education and Special Projects</i>	<i><u>7,000</u></i>
<i>Total</i>	<i>\$45,000</i>

An example of something that might be funded in the education and special projects category is publishing and circulating the prior appropriation issue paper. The Task Force will discuss possible topics for next year's technical and policy conferences at its May 5, 2008 meeting. One possible technical conference subject is how ground water right permits are acquired under HB 831.

Growing Communities Doctrine

Arvid Hiller and Gerald Mueller discussed the growing communities doctrine. Task Force members had received three related documents prior to this meeting: a December 27, 2007 letter from Stephen R. Brown to Bill Schultz regarding Mountain Water Company's water rights, Mr. Schultz's January 31, 2008 reply, and an article by Jeff B. Kray entitled, "Municipal Water Law: Washington's Landmark Law Faces Challenge." Because these documents are in a pdf file format, they are not attached directly to this summary as appendices.

Mr. Hiller explained that Mountain Water Company has sufficient water rights to supply its customers' needs, but seeks to dig new wells in different locations to serve new customers rather than install additional pipes to transport water to them from existing wells. In his letter, Mr. Brown explains how the growing communities doctrine means that the company's existing municipal rights "...implicitly include the ability to expand use over time." In his letter of response, Bill Schultz states that DNRC does not believe that current Montana water law "...provides for the special considerations for municipal use based on the 'growing communities doctrine'..." The third document describes a current Washington statute that incorporates the growing communities doctrine into Washington water law and two legal challenges to the statute's constitutionality. One of the constitutional challenges alleges that allowing municipal rights to include growing water uses would take the rights of other water right holders without

compensation. The Washington statute also defines a municipal water utility service territory and sets water use efficiency and other requirements. Mr. Hiller said that Mountain Water Company is considering asking that a bill be introduced before the next legislative session that would provide for the growing communities doctrine.

Basin Water Supply and Growth Conference

Gerald Mueller discussed his memo summarizing the 29 evaluations of the conference submitted by conference participants. The memo is included below as Appendix 4. He stated that the final number of registrants are not yet available, but Dr. Shively estimated it at 132. Mr. Mueller noted that the answers to the quantitative questions were favorable, averaging about 2 when the scale ranged from 1 equal to the highest level of agreement and 5 the highest level of disagreement. Narrative comments included:

- The development/real estate communities could have been better represented.
- All speakers should address a central theme.
- Speakers should be held to specific times.
- More time should be allowed for discussion, perhaps by providing more small group time.

Task Force member comments included:

- The conference went well.
- More break time should be included in future conferences to allow more participant interaction.
- The view of the building industry representative that local governments have the authority to require community systems was interesting, particularly because it was not shared by the local government representatives.

Copies of the conference presentation and the digital audio recording of the proceedings is available on the Task Force web site at:

http://dnrc.mt.gov/wrd/water_mgmt/clarkforkbasin_taskforce/watersupply_conf_powerpoints.asp.

Water Right System Policy Paper

The Task Force reviewed the draft paper dated February 2008, which had been circulated previously to Task Force members. Task Force member comments were as follows:

- On page 1, in the first paragraph, delete the language, ■rather than by preference for certain types of use based on economic efficiency, fairness, or other criteria.●
- On page 2, in the first paragraph, remove the discussion of Article II, Section 3 of the state constitution to the section on challenges to the prior appropriation system.
- On page 2, in the first paragraph under the heading ■Adjudication,● delete the words ■Twenty-five years later,● and add the number of temporary preliminary and preliminary decrees which the Water Court has completed to the number of decrees labeled final.
- On page 3, the first incomplete sentence, change ■was on pace to complete...● to ■...is on pace to complete...●
- On page 3, remove the language, ■The expedited adjudication will result in the increased ability to enforce water rights... or should be revised.● After changing ■will● to ■may●, consider moving this language to the section on challenges to the prior appropriation system.
- On page 3, in the first paragraph under the heading ■Surface Water Appropriations●, delete the words ■under the prior appropriation doctrine● and add ■usually● after ■Montanans.●
- On page 3, in this same paragraph replace the underlined red language with a shorter reference to the DNRC hearing examiner's decision and the Salish and Kootenai Tribal water rights.
- On page 3, in the second paragraph under this same heading, remove the sentence ■Basing significant economic activity on a new water junior water right would likely be a risky proposition.● Consider moving it somewhere later in the paper.

- On page 3, move the discussion of water reservations to a new section entitled ■Water Reservations.● Clarify that both surface and ground water can be reserved. Specify the purposes of the existing reservations (i.e., municipal, irrigation, instream flows, and water quality). Clarify that while reservations have not been granted in other basins, reservation applications were made for the upper Clark Fork River basin, but processing of them was suspended.
- On page 4, in the first sentence, reduce the number of mechanisms to three: changes to existing water rights, contracting for stored water, and using ground water.
- On page 4, under the heading ■Ground Water Appropriations●, delete the sentence ■This code allowed DNRC to *...administratively close a ground water aquifer to further appropriation or to restrict or condition existing or future ground water allocations on the basis of water quality concerns by establishing a controlled ground water area.▲
- On page 4, in the last sentence of this same paragraph, change ■...35 gallons or less per minute...● to ■...35 gallons per minute or less...●
- On page 5, under the heading ■Administrative and Enforcement Challenges●, rewrite the first sentence, changing it to a more direct reference to the state constitution. (Although not in the constitution, the state also claims to own its wildlife.)
- Add a discussion of the growing communities doctrine to the section on domestic water supply.
- In discussing enforcement challenges, state that the existing system provides for local control.
- Add a discussion in the enforcement challenge section about the approach in Idaho which allows local control while making water commissioners state employees.

Discussion of the paper will continue beginning with page 5 at the next meeting.

Public Comment

There was no additional public comment.

Next Meeting

The next meeting is scheduled for 9:30 a.m. on Monday, May 5, 2008 in the Missoula DFWP meeting room. Lunch will be provided.

Appendix 1
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

Director's Office
(406)444-2074
P.O. Box 201600
Helena, MT 59620-1601

March 7, 2008

Mr. J. William McDonald
Regional Director
Pacific Northwest Region
Bureau of Reclamation
United States Department of the Interior
1150 North Curtis Road, Suite 100
Boise, Idaho 83706-1234

Dear Mr. McDonald:

I am writing in response to your letter of December 6, 2006 in which you outlined and estimated the costs of the steps required to obtain contracts for water from Hungry Horse Reservoir. Since our meeting in Helena in 2006 and our exchange of correspondence, the Montana Legislature has appropriated finds to pay for BOR's costs of performing the Cost Reallocation Analysis. Also, we have been discussing with basin residents and BOR staff various aspects of the contracting process and the use of Hungry Horse water.

Your staff has instructed us that a letter would be necessary to notify BOR of our intention to proceed with the effort to contract for water from Hungry Horse Reservoir. We now wish to notify BOR of such an intention and request that BOR conduct a Cost Reallocation Analysis for Hungry Horse Reservoir and initiate other activities necessary to begin the contracting process. Presumably, this effort will require modeling of the impact of such water use on Hungry Horse and Columbia River system operations. We request that the model runs consider the use of Hungry Horse water to offset the impacts of future consumption by domestic, municipal, and industrial users throughout the Clark Fort basin ultimately in the amount of 100,000 acre-feet per year.

Further, we understand that embarking on this contracting effort entails several administrative activities as described in your letter of December 2006. Due to fiscal constraints imposed upon DNRC by the Montana Legislature, it will be necessary to have an agreement for conducting the Cost Reallocation Analysis in place by June 30, 2008. We request that your office contact Tim Bryggman of DNRC at (406) 444-6889 so that we may begin the contracting process.

Thank you for your attention to this matter.

Mary Sexton
Director

Appendix 2

MEMORANDUM

TO: JIM ELLIOTT, CHAIR
WATER POLICY INTERIM COMMITTEE

FROM: JOHN TUBBS, ADMINISTRATOR
WATER RESOURCES DIVISION, DNRC

SUBJECT: HB 831 PROPOSED AMENDMENTS SUMMARY

DATE: 6/19/2008

CC: JOE KOLMAN

As requested by the Chairman, the Department has prepared a point by point analysis of the changes to statute proposed in the draft handed out to the Committee on March 6, 2008. In the future we will try to have a similar document prepared prior to submission of any draft proposal.

The Department has been working with MCA 85-2-360 through 85-2-369 for a year and believes that the very detailed text of the statutes limits the discretion of the Department to a point that permit applicant's costs and risks are unnecessarily high. The Department may also see increased costs associated with litigation over the detail in the statute. In proposing the changes to these statutes, the Department's intent is to try and keep the goals of HB 831 to protect senior water right holders and provide a process to get a ground water permit in a closed basin but reduce the detail. By reducing the detail, we believe the Department can be more flexible when faced with the facts of each proposed development we can reduce the possibility of technicalities being the basis for denial of permits which will, in turn, reduce the risk of litigation to the applicant and to the Department, and we can make the application process under these provisions more attractive to the development community. What we do know is we are seeing very few HB 831 applications and we are told that the reason is cost, risk and the ease of using exempt wells as a source of drinking water for subdivisions.

The following narrative tries to give the Committee some perspective as to the purposes and reasons we are proposing the changes to statute. Again I would ask the Committee to take these amendments in the same context as the draft reports prepared by Legislative staff. This is not an official agency legislative proposal; rather it is intended to focus the debate on the permitting process in closed basins.

- **Changes to 85-2-360:**

1. Page 1, Line 5: 85-2-321 is added to include the Milk River closure.
2. Page 1, Lines 5-10: These changes would require mitigation in order to consumptively use groundwater in a closed basin. The Department is considering these changes because of two facts: Consumptive use of groundwater will result in net depletion of surface water over time, and basins were closed to new surface water uses because the Legislature or the Department determined that surface water has been fully appropriated in the basin. Based on these reasons, the proposed changes eliminate the statutory questions of whether consumptive use of ground water will cause net depletion (it will) and whether net depletion will cause adverse affect (in a closed basin there is no legally available surface water). By eliminating these questions, applicants will know they have to offset consumptive use through mitigation which will make

the process more certain and eliminate objections and legal actions to determine if there is net depletion and/or adverse affect.

3. Page 1, Lines 11, 12: This change excludes the non-consumptive use of ground water from the requirements of mitigation. The Department is seeing an increase in applications for use of ground water through “heat pumps” for climate control in buildings. This is a non-consumptive use of ground water and should not require mitigation.
4. Page 1, Lines 13-22: Same as lines 5-10 above.
5. Page 1, Lines 23-26: Clarify that if you develop a well for the purpose of conducting hydrogeologic tests, the use of the well must cease until a water right is obtained.
6. Page 1, Lines 27-34: Same as in lines 5-10 above.
7. Page 1, Lines 37-39: Simplify the language of the statute.
- **Changes to 85-2-361:**
 8. Page 1, Lines 48, 49: This change brings the requirement to have a qualified professional from (ii) below in order to simplify the wording of the section.
 9. Page 1, Lines 49-55: These changes list the topics that our professional hydro-geologists need in a hydrogeologic assessment associated with a ground water development to evaluate the application. This begins to simplify and clarify the detail of section 361.
 10. Page 1, Lines 55-58; Line 1 on Page 2: These changes pull together criteria to evaluate water quality in the hydrogeologic assessment.
 11. Page 2, Lines 1-5: These changes eliminate a long list of different surface water bodies. Note that on Page 1, Line 54 there is a reference to surface water. Surface water is already defined in statute and rule to include this list so these changes are intended to simplify the language of the section while retaining its purpose.
 12. Page 2, Lines 8-12: These changes are intended to clarify and simplify what an applicant needs to show in predicting net depletions: the diverted amount, the consumed amount and the amount returned. Again the purpose of the original language is maintained but the language is simplified.
 13. Page 2, Lines 16-20: This requirement is moved to Page 1, Lines 48 and 49.
 14. Page 2, Lines 21-24: This sub-section has been very difficult for the Department to administer as it may lead an applicant to submit an application that we can not process under 85-2-311 MCA criteria. (In other words, if the effects cross the boundaries described in the existing sub-section the applicant may ignore these effects based upon this provision. However, the Department could not ignore the impacts beyond the boundary identified in the sub-section under 85-2-311. MCA, if it had the potential to adversely affect a water right holder outside of the boundary.) Rather than dictating an artificial surface area boundary in statute, the Department believes that the “qualified professional” should be allowed to define the extent of the influence of ground water development for the basis the hydrogeologic assessment. This eliminates potential conflict between the Department, the applicant, and the objectors.

15. Page 2, Lines 25-56: These changes eliminate the specific list of requirements for aquifer properties and aquifer boundaries. The Department believes the “qualified professional” would have sufficient legislative guidance provided on Page 1, Lines 51 through Page 2 Line 1, to develop a hydrogeologic assessment. These changes would simplify the statute and eliminate the potential for law suits over technical oversights in an application while maintaining the purpose of the provisions.
16. Page 2, Lines 57, 58; Page 3 Lines 1-8: These changes clarify the data requirements prior to submission to the Bureau of Mines and Geology for inclusion in the ground water data base. The Department receives applications where the initial hydrogeologic assessment is in error. Through the deficiency letter process, as well as consultation with the applicant’s “qualified professional” these errors are corrected. These changes clarify that it is the corrected hydrogeologic assessment as deemed by the Department that is sent to the Bureau.

- **Changes to 85-2-362:**

17. Page 3, Lines 15-21: These changes simplify statute by requiring mitigation of net depletions not mitigation of net depletions that cause adverse affect. Again, this statute only impacts closed basins and in closed basins the Legislature or the Department has determined that the surface water is fully appropriated.
18. Page 3, Lines 23-58; Page 4 Lines 1-4: These changes clarify and simplify what is required in a mitigation plan by eliminating the duplicate requirements for mitigation plans and aquifer recharge plans. Yet the changes keep the unique water quality requirements needed for aquifer recharge plans in a separate sub-section.
19. Page 4, Lines 5-8: These changes are intended to identify proposals and actions that can not be considered a “mitigation” plan. These mirror a Colorado statute excluding the elimination of vegetation to reduce consumptive use and the paving or covering of land with hard surfaces again eliminating consumptive use as components of a mitigation plan.
20. Page 4, Line 11 and Lines 13, 14: This change again eliminates the question of adverse affect and focuses mitigation on net depletion.

- **Changes to 85-2-634:**

21. Page 4, Lines 23 – 26: These changes coordinate the acceptance of the water right permit application with required discharge permits issued by the Department of Environmental Quality. However, rather than requiring the applicant to have already obtained the discharge permit from DEQ before applying to DNRC for a water right (a sequential process that delays the submission of the water right permit application and increases the overall time frame for the developer) the changes provide for a coordinated but parallel process that should protect water quality and reduce overall time frames. It is important to note that in (2) Lines 27-29 the Department cannot issue the permit until the DEQ discharge permit is issued.

- **Changes to 85-2-639:**

22. Page 4 Lines 47, 48: Reiterates that once aquifer testing is completed any use of the water shall cease.

85-2-360. Ground water appropriation right in closed basins. (1) An application for a ground water appropriation right in a basin closed pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344 or administratively closed pursuant to 85-2-319 or 85-2-321 must be accompanied by a hydrogeologic assessment of net depletion to surface water pursuant to 85-2-361; and must be accompanied by an aquifer recharge or mitigation plan as provided in 85-2-362, if the assessment predicts a net depletion to surface water.

(2) Ground water applications for uses non-consumptive to the source are exempt from the requirements in (1) above.

(3) If the applicant has used the water for the purpose of conducting testing, the applicant shall terminate the use of the water after testing is completed. Failure to terminate use of the water may result in a fine of not more than \$1,000 for each day of the violation.

(4) A determination of whether or not there is an adverse effect on a prior appropriator as the result of a new appropriation right is a determination that must be made by the department based on the amount, timing, and location, of net depletion.

(5) The priority date for an appropriation right that is granted to an entity whose permit application was returned after April 11, 2006, and before May 3, 2007, because of the department's interpretation of a court decision is the date of the initial application to the department.

85-2-361. Hydrogeologic assessment -- definition -- minimum requirements.

(1) (a) For the purposes of 85-2-360 through 85-2-362, "hydrogeologic assessment" means a report prepared by a hydrogeologist, a qualified scientist, or a qualified licensed professional engineer that describes the geology, hydrogeologic environment including hydraulic properties and boundaries, and predicted net depletion, if any, including the amount, timing, and location of net depletion to surface water within the potentially affected area. Further, the report must describe water quality with regard to the provisions of 75-5-410 and 85-2-364, and any water treatment method that will be used at the time of any type of injection or introduction of water to the aquifer to ensure compliance with 75-5-410 and 85-2-364 and the water quality laws under Title 75, chapter 5.

(b) In predicting net depletion of surface water from a proposed use, consideration must be given, at a minimum, to:

(i) the actual amount of water diverted and consumed; and

(ii) any return flows from the proposed use, including but not limited to any treated wastewater return flows if the treated wastewater that is considered effluent meets the requirements of 75-5-410 and 85-2-364.

(2) The final corrected hydrogeologic assessment, the model if used, the aquifer test data, and other related information must be submitted to the department. The department shall submit this information from a correct and complete application to the bureau of mines and geology. The bureau of mines and geology shall ensure that information submitted pursuant to this section is entered into the ground water information center database as part of the ground water assessment program. The department and bureau of mines and geology shall determine the required format of the information to allow entry into the groundwater database.

(3) An entity that has previously conducted some type of hydrogeologic assessment may submit the information from that assessment as the hydrogeologic assessment required by this section if the information meets the criteria and requirements of this section.

85-2-362. Aquifer recharge or mitigation plans in closed basins -- minimum requirements. (1) An aquifer recharge or mitigation plan must provide evidence of how the plan will offset the required amount of net depletion to surface water from an appropriation of water, including at a minimum;

(a) the amount of water reallocated through exchange or substitution;
(b) timing and location, generally, of water reallocated through exchange or substitution;
(c) how the mitigation water in the plan will be put to beneficial use;
(e) how the water in the plan will be measured; and
(f) evidence that an application for a change in appropriation right, if necessary, has been submitted.

(2) In addition to the requirements listed in (1), an aquifer recharge plan must also include:

(a) a description of the process by which water will be reintroduced to the aquifer;

(b) evidence that the appropriate water quality related permits have been granted pursuant to Title 75, chapter 5, and pursuant to 75-5-410 and 85-2-364;

(3) Mitigation water does not include the salvage of tributary waters by the eradication of phreatophytes, nor does it include the use of tributary water collected from land surfaces that have been made impermeable, thereby increasing the runoff but not adding to the existing supply of tributary water.

(4) The department may not require an applicant, through a mitigation plan or an aquifer recharge plan, to provide more water than the quantity needed to offset net depletion.

(5) An appropriation right that relies on a mitigation plan or aquifer recharge plan to offset net depletion of surface water must be issued as a conditional permit that requires that the mitigation plan or aquifer recharge plan must be exercised when the appropriation right is exercised.

85-2-364. Department permit coordination -- requirements for aquifer recharge plans. To ensure that the department and the department of environmental quality are coordinating their respective permitting activities:

(1) an applicant for a new appropriation right pursuant to 85-2-360 that involves aquifer recharge and requires a discharge permit, shall provide evidence that an application for the discharge permit has been submitted to the appropriate agency; and

(2) the department may not grant a new appropriation right pursuant to 85-2-360 that involves aquifer recharge until the discharge permit, if necessary, has been obtained and presented to the department.

85-2-369. Aquifer testing, test well, or monitoring well data submission -- not beneficial use.

(1) All aquifer testing data and other related information from test wells, monitoring wells, or other sources that is collected for the purpose of obtaining a new appropriation right or a change in appropriation right must be submitted to the department and the bureau of mines and geology in a form prescribed by the department and the bureau of mines and geology. The bureau of mines and geology shall ensure that information submitted pursuant to this section is entered into the ground water information center database as part of the ground water assessment program.

(2) (a) Water testing or monitoring is not a beneficial use of water requiring the filing of a permit application.

(b) A permit is not required if the intent of a person is to conduct aquifer tests, water quality tests, water level monitoring, or other testing or monitoring of a water source.

(c) Upon completion of the activities described in (2)(b), the applicant shall terminate use of the water.

85-2-360. Ground water appropriation right in closed basins. (1) An application for a ground water appropriation right in a basin closed pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344 or administratively closed pursuant to 85-2-319 or 85-2-321 must be accompanied by a hydrogeologic assessment of net depletion to surface water pursuant to 85-2-361; and must be accompanied by an aquifer recharge or mitigation plan as provided in 85-2-362, if the assessment predicts a net depletion to surface water.

(2) Ground water applications for uses non-consumptive to the source are exempt from the requirements in (1) above.

(3) If the applicant has used the water for the purpose of conducting testing, the applicant shall terminate the use of the water after testing is completed. Failure to terminate use of the water may result in a fine of not more than \$1,000 for each day of the violation.

(4). A determination of whether or not there is an adverse effect on a prior appropriator as the result of a new appropriation right is a determination that must be made by the department based on the amount, location, and duration of net depletion.

(5) The priority date for an appropriation right that is granted to an entity whose permit application was returned after April 11, 2006, and before May 3, 2007, because of the department's interpretation of a court decision is the date of the initial application to the department.

85-2-361. Hydrogeologic assessment -- definition -- minimum requirements.

(1) (a) For the purposes of 85-2-360 through 85-2-362, "hydrogeologic assessment" means a report prepared by a hydrogeologist, a qualified scientist, or a qualified licensed professional engineer that describes the geology, hydrogeologic environment including hydraulic properties and boundaries, and predicted net depletion, if any, including the amount, timing, and location of net depletion to surface water within the potentially affected area. Further, the report must describe water quality with regard to the provisions of 75-5-410 and 85-2-364, and any water treatment method that will be used at the time of any type of injection or introduction of water to the aquifer to ensure compliance with 75-5-410 and 85-2-364 and the water quality laws under Title 75, chapter 5.

(b) In predicting net depletion of surface water from a proposed use, consideration must be given, at a minimum, to:

(i) the actual amount diverted and consumed; and

(ii) any return flows from the proposed use, including but not limited to any treated wastewater return flows if the treated wastewater that is considered effluent meets the requirements of 75-5-410 and 85-2-364.

(2) The final corrected hydrogeologic assessment, the model if used, the test well data, and other related information must be submitted to the department. The department shall submit this information from a correct and complete application to the bureau of mines and geology. The bureau of mines and geology shall ensure that information submitted pursuant to this section is entered into the ground water information center database as part of the ground water assessment program. The department and bureau shall determine the required format of the information to allow entry into the ground water database.

(3) An entity that has previously conducted some type of hydrogeologic assessment may submit the information from that assessment as the hydrogeologic assessment required by this section if the information meets the criteria and requirements of this section.

85-2-362. Aquifer recharge or mitigation plans in closed basins -- minimum requirements. (1) An aquifer recharge or mitigation plan must provide evidence of how the plan will offset the required amount of net depletion to surface water from an appropriation of water, including at a minimum:

- (a) the amount of water reallocated through exchange or substitution;
- (b) timing and location, generally, of water reallocated through exchange or substitution;
- (c) how the mitigation water in the plan will be put to beneficial use;
- (e) how the water in the plan will be measured; and

(

(f) evidence that an application for a change in appropriation right, if necessary, has been submitted.

(2) In addition to the requirements listed in (1), an aquifer recharge plan must also include:

(a) a description of the process by which water will be reintroduced to the aquifer;

(b) evidence that the appropriate water quality related permits have been granted pursuant to Title 75, chapter 5, and pursuant to 75-5-410 and 85-2-364;

(3) Mitigation water does not include the salvage of tributary waters by the eradication of phreatophytes, nor does it include the use of tributary water collected from land surfaces that have been made impermeable, thereby increasing the runoff but not adding to the existing supply of tributary water.

(4) The department may not require an applicant, through a mitigation plan or an aquifer recharge plan, to provide more water than the quantity needed to offset net depletion.

(5) An appropriation right that relies on a mitigation plan or aquifer recharge plan to offset net depletion of surface water must be issued as a conditional permit that requires that the mitigation plan or aquifer recharge plan must be exercised when the appropriation right is exercised.

85-2-364. Department permit coordination -- requirements for aquifer recharge plans. To ensure that the department and the department of environmental quality are coordinating their respective permitting activities:

(1) an applicant for a new appropriation right pursuant to 85-2-360 that involves aquifer recharge and requires a discharge permit, shall provide evidence that an application for the discharge permit has been submitted to the appropriate agency; and

(2) the department may not grant a new appropriation right pursuant to 85-2-360 that involves aquifer recharge until the discharge permit, if necessary, has been obtained and presented to the department.

85-2-369. Aquifer testing, test well, or monitoring well data submission -- not beneficial use.

(1) All aquifer testing data and other related information from test wells, monitoring wells, or other sources that is collected for the purpose of obtaining a new appropriation right or a change in appropriation right must be submitted to the department and the bureau of mines and geology in a form prescribed by the department and the bureau of mines and geology. The bureau of mines and geology shall ensure that information submitted pursuant to this section is entered into the ground water information center database as part of the ground water assessment program.

(2) (a) Water testing or monitoring is not a beneficial use of water requiring the filing of a permit application.

(b) A permit is not required if the intent of a person is to conduct

aquifer tests, water quality tests, water level monitoring, or other testing or monitoring of a water source.

(c) Upon completion of the activities described in (2)(b), the applicant shall terminate use of the water.

Unofficial Draft Copy

As of: April 7, 2008 (1:17pm)

LC5014

Appendix 3

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act An Act revising the laws relating to water quality for subdivisions; clarifying the authority of local governments to require public water supply systems and public sewer and wastewater systems for subdivisions; authorizing state and local governments to give priority in the review process to subdivision applications that provide for public water supply systems or public sewer and wastewater systems; amending sections 76-3-504, 76-3-511, 76-3-601, and 76-4-125, MCA."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-3-504, MCA, is amended to read:

"76-3-504. Subdivision regulations -- contents. (1) The subdivision regulations adopted under this chapter must, at a minimum:

a) list the materials that must be included in a subdivision application in order for the application to be determined to contain the required elements for the purposes of the review required in 76-3-604(1);

(b) except as provided in 76-3-210, 76-3-509, or 76-3-609, require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

c) establish procedures consistent with this chapter for the submission and review of subdivision applications and amended applications;

(d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(e) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development. The regulations must prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques or other mitigation measures authorized under 76-3-608(4) and (5). Approved construction techniques or other mitigation measures may not include building regulations as defined in 50-60-101 other than those identified by the department of labor and industry as provided in 50-60-901.

(f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(g) prescribe standards for:

(i) the design and arrangement of lots, streets, and roads;

(ii) grading and drainage;

(iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that meet the:

(A) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions that will create one or more parcels containing less than 20 acres; and

(B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres; and

(iv) the location and installation of public utilities;

(h) provide procedures for the administration of the park and open-space requirements of this chapter;

(i) provide for the review of subdivision applications by affected public utilities and those agencies of local, state, and federal government identified during the preapplication consultation conducted pursuant to subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review may not delay the governing body's action on the application beyond the time limits specified in this chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of the application by the governing body.

(j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider to:

(i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;

(ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a

landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

(iii) reserve and sever all surface water rights from the land;

(k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in the subdivision that:

(A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

(B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and

(C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.

(ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:

(A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the

governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

(B) the water rights are removed or the process has been initiated to remove the water rights from the Subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

(l) require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;

(m) require the subdivider to describe, dimension, and show public utility easements in the subdivision on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility services within the subdivision.

(n) establish whether the governing body, its authorized agent or agency, or both will hold public hearings;

(o) establish procedures describing how the governing body or its agent or agency will address information presented at the hearing or hearings held pursuant to 76-3-605 and 76-3-615;

(p) establish criteria that the governing body or reviewing authority will use to determine whether a proposed method of disposition using the exemptions provided in 76-3-201 or 76-3-207 is an attempt to evade the requirements of this chapter. The regulations must provide for an appeals process to the governing body if the reviewing authority is not the governing body.

(q) establish a preapplication process that:

(i) requires a subdivider to meet with the agent or agency, other than the governing body, that is designated by the governing body to review subdivision applications prior to the subdivider submitting the application;

(ii) requires, for informational purposes only, identification of the state laws, local regulations, and growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;

(iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local, state, and federal government, and any other entities that may be contacted for comment on the subdivision application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during the review of the application, the agent or agency designated by the governing body contacts a public

utility, agency, or other entity that was not included on the list originally made available to the subdivider, the agent or agency shall notify the subdivider of the contact and the timeframe for response.

(iv) requires that a preapplication meeting take place no more than 30 days from the date that the agent or agency receives a written request for a preapplication meeting from the subdivider; and

(v) establishes a time limit after a preapplication meeting by which an application must be submitted as provided in 76-3-604.

(2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under 76-3-509 and this section may include provisions that are consistent with this section that promote cluster development.

(3) In implementing the provisions of subsection (1)(g)(iii), the governing body may, as provided in 76-3-511, require public water systems and/or public sewer systems.

~~(3)~~(4) The governing body may establish deadlines for submittal of subdivision applications."

{Internal References to 76-3-504:

50-60-901 50-60-901 76-3-511 76-3-511

76-3-601 76-3-604 76-3-604 76-3-605

76-3-609 76-3-615}

Section 2. Section 76-3-511, MCA, is amended to read:

"76-3-511. Local regulations no more stringent than state regulations or guidelines. (1) Except as provided in subsections

(2) through (4) or unless required by state law, a governing body may not adopt a regulation under 76-3-501 or ~~76-3-504(1)(f)(iii)~~ 76-3-504(1)(g)(iii) that is more stringent than the comparable state regulations or guidelines that address the same circumstances. The governing body may incorporate by reference comparable state regulations or guidelines.

(2) The governing body may adopt a regulation to implement 76-3-501 or 76-3-504(1)(f)(iii) ~~76-3-504(1)(g)(iii)~~ that is more stringent than comparable state regulations or guidelines only if the governing body makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

(a) the proposed local standard or requirement protects public health or the environment; and

(b) the local standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the governing body's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(4) (a) A person affected by a regulation of the governing body adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable state regulations or guidelines may petition the governing body

to review the regulation. If the governing body determines that the regulation is more stringent than comparable state regulations or guidelines, the governing body shall comply with this section by either revising the regulation to conform to the state regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged regulation. The governing body may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the governing body for a regulation review under subsection (4)(a) if the governing body adopts a regulation after January 1, 1990, in an area in which no state regulations or guidelines existed and the state government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted governing body regulation."

{Internal References to 76-3-511:

76-3-501 76-3-504 76-3-622 }

Section 3. Section 76-3-601, MCA, is amended to read:

"76-3-601. Submission of application and preliminary plat for review -- water and sanitation information required. (1)

Subject to the submittal deadlines established as provided in 76-3-504(3), the subdivider shall present to the governing body or to the agent or agency designated by the governing body the

subdivision application, including the preliminary plat of the proposed subdivision, for local review. The preliminary plat must show all pertinent features of the proposed subdivision and all proposed improvements and must be accompanied by the preliminary water and sanitation information required under 76-3-622. The governing body may give priority to applications that provide for a public water system or a public sewer and wastewater system.

(2) (a) When the proposed subdivision lies within the boundaries of an incorporated city or town, the application and preliminary plat must be submitted to and approved by the city or town governing body.

(b) When the proposed subdivision is situated entirely in an unincorporated area, the application and preliminary plat must be submitted to and approved by the governing body of the county. However, if the proposed subdivision lies within 1 mile of a third-class city or town, within 2 miles of a second-class city, or within 3 miles of a first-class city, the county governing body shall submit the application and preliminary plat to the city or town governing body or its designated agent for review and comment. If the proposed subdivision is situated within a rural school district, as described in 20-9-615, the county governing body shall provide a summary of the information contained in the application and preliminary plat to school district trustees.

(c) If the proposed subdivision lies partly within an incorporated city or town, the application and preliminary plat

must be submitted to and approved by both the city or town and the county governing bodies.

(d) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall coordinate the subdivision review and annexation procedures to minimize duplication of hearings, reports, and other requirements whenever possible.

(3) The provisions of 76-3-604, 76-3-605, 76-3-608 through 76-3-610, and this section do not limit the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to 7-3-4444."

{Internal References to 76-3-601:

76-3-609}*

Section 4. Section 76-4-125, MCA, is amended to read:

"76-4-125. Review of subdivision application -- land divisions excluded from review. (1) Except as provided in subsection (2), an application for review of a subdivision must be submitted to the reviewing authority. The review by the reviewing authority must be as follows:

(a) At any time after the developer has submitted an application under the Montana Subdivision and Platting Act, the developer shall present a subdivision application to the reviewing authority. The application must include preliminary plans and specifications for the proposed development, whatever information the developer feels necessary for its subsequent review, any public comments or summaries of public comments

collected as provided in 76-3-604(6), and information required by the reviewing authority. Subdivision fees assessed by the reviewing authority must accompany the application. If the proposed development includes onsite sewage disposal facilities, the developer shall notify the designated agent of the local board of health prior to presenting the subdivision application to the reviewing authority. The agent may conduct a preliminary site assessment to determine whether the site meets applicable state and local requirements.

(b) Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall make a final decision on the proposed subdivision within 60 days after the submission of a complete application and payment of fees to the reviewing authority unless an environmental impact statement is required, at which time this deadline may be increased to 120 days. The reviewing authority may not request additional information for the purpose of extending the time allowed for a review and final decision on the proposed subdivision. The reviewing authority may give priority to applications that provide for a public water system or a public sewer and wastewater system. If the department approves the subdivision, the department shall issue a certificate of subdivision approval indicating that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction.

(2) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to the provisions of this part, except that the following divisions or parcels, unless the

exclusions are used to evade the provisions of this part, are not subject to review:

(a) the exclusions cited in 76-3-201 and 76-3-204;

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that water or sewage disposal facilities may not be constructed on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision;

(c) divisions made for purposes other than the construction of water supply or sewage and solid waste disposal facilities as the department specifies by rule;

(d) divisions located within jurisdictional areas that have adopted growth policies pursuant to chapter 1 or within first-class or second-class municipalities for which the governing body certifies, pursuant to 76-4-127, that adequate storm water drainage and adequate municipal facilities will be provided; and

(e) subject to the provisions of subsection (3), a remainder of an original tract created by segregating a parcel from the tract for purposes of transfer if:

(i) the remainder is served by a public or multiple-user sewage system approved before January 1, 1997, pursuant to local regulations or this chapter; or

(ii) the remainder is 1 acre or larger and has an individual sewage system serving a discharge source that was in existence prior to April 29, 1993, and, if required when installed, the system was approved pursuant to local regulations or this

chapter.

(3) Consistent with the applicable provisions of 50-2-116, a local health officer may require that, prior to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be segregated from the remainder referenced in subsection (2)(e)(ii), the remainder include acreage or features sufficient to accommodate a replacement drainfield."

{*Internal References to 76-4-125:*

75-1-208 76-3-622 76-4-104 76-4-121

76-4-121 76-4-122 76-4-127 76-4-131}

- END -

{Name : Joe P. Kolman
Title : Research Analyst
Agency: LSD
Phone : 444-9280
E-Mail: jkolman@mt.gov}

Appendix 4

Clark Fork River Basin Task Force

MEMORANDUM

Date: April 2, 2008
To: Clark Fork Task Force
From: Gerald Mueller
Re: Water Supply and Growth Conference Evaluation

Participants in the conference were asked to complete an evaluation form at the end of the conference. Twenty-nine forms were returned to us. The following is a summary of the results of the numerical question and a compilation of all written comments. For the numerical questions, people were asked for a response from 1 – 5, with 1 representing the highest level of agreement and 5 the highest level of disagreement.

- 1.a. The content of the conference met generally my needs. Average response: 1.97
- 1.b. Why or why not?
- I thought it successfully addressed the audience it was designed for i.e., planners, commissioners, developers.
 - A couple of topics seemed to be irrelevant.
 - Very important to learn about the disconnect between state and local government processes for development permitting. The lack of water planning, the disincentives of current law, and the opportunities to do a better job.
 - The session on “who makes what decision...” was confusing.
 - Some speakers were not very good at presenting. Would be good to get “Joe Schmoe’s” perspective too i.e., citizens from Ravalli County for and against zoning.
 - Good agenda, speakers, and cross section of attendees.
 - Good speakers, good topics, but presenters/panels were disjointed and didn’t focus on one central theme. We needed way more time to address problems/solutions to reconcile growth, land use, and water.
 - It skirts the real issues.
 - This was very interesting and relevant for me. The information on current issues and concerns was what I came for and received. The quality of the presentations could have been a lot better.
 - I am not from the basin.
 - It provided a wide swath of information and was very informative. I would have liked to see more climatological information.
- 2.a. The information about water rights was useful. Average response: 1.83
- 2.b. Why or why not?
- Most people don’t know as much as they should about this topic.
 - All information is useful because change is in the air.

- Keep presentations captivating and limit wording on slides.
- Yes, I didn't know much about this.
- Good foundation.
- The basic water rights legal background was helpful.
- There is a real known issue, address it, discuss it.
- Adequate – informational. May be interesting to look at broader regional trends (lift our heads above the basin/state – think of broader possibilities).
- Good coverage in a short period of time.
- Good basics, but I was familiar with law and permitting process.
- It explained how the system works, which is essential to understand the issues.

3.a. The information about basin hydrology was useful. Average response: 2.00

3.b. Why or why not?

- It is becoming crucial to understand groundwater developments.
- The debate about surface and groundwater.
- Great diagrams from RLK and Missoula Representative. Did not appreciate statistics manipulation by Marc Spratt.
- Interesting.
- But caution: still learn local solution for local issues i.e., sub-basins.
- It was helpful, but again – how does it fit with addressing common problems/solutions for tying land use and water together. This theme should be addressed with each panel, presentation.
- Should have described generally instead of details on each drainage.
- Marc was good but needed more diversity of discussion.
- The failure to address upstream/seasonal hydrology was significant. It was also obvious that climate change is the elephant in the room.
- Neat.
- Good to have snapshot and long-term look at flows and give groundwater and hydrology of past millennia and centuries too.
- It's important to know how the basin works.

4.a. The information about growth management was useful. Average response: 1.93

4.b. Why or why not?

- I disagree with the tone – portrayed growth negatively.
- Growth management – before management, a statewide study is required. Who should pay for it, Matt Clifford said, “the developers of land.” Where are the spokespersons for this group?
- One of my favorite panels I wanted to ask more questions about connection between SB 201 and current law for growth policy/planning.
- Very interesting information.
- Awareness and education. Apparent that some folks “don't have clue” – from a realtor.
- Planning and zoning is needed, but this didn't really get at problems/solutions to reconcile land use/water permitting.

- Some of it was not on point.
- Somewhat conflictive in numbers but most points good.
- Myra's presentation was excellent. It would have been great to talk more interactively afterward.
- We got the same problems.
- Demographics interesting.
- It showed how the demand for water supply will change.

5.a. The facilities adequate? Average response: 1.62

5.b. Why or why not?

- But needed coffee at first break on second day.
- Easily accessible.
- Too dark and confined.
- Very much enjoy the setting. Campus and Missoula are very cool.
- It was way too hot in the theater. Room temperature needs to be lower. Other than that, good location and set up.
- Bit warm. Day two, morning break should have had refreshments.
- Facilities are great.
- Too hot.
- Main problem is the chairs in the movie theater do not have a note-taking surface – it would be better to have a room with chairs with little “desks.”
- Let people know about local construction of streets in application materials.
- Excellent.
- Comfortable – but not conducive to interactive discussion. More snacks.
- Nice.
- Plenty of space.

6.a. The discussion of water supply and growth issues was useful. Average response: 1.69

6.b. Why or why not?

- Yes it will be getting to be a bigger problem in the future.
- I believe there is plenty of groundwater available for any growth, as least where the growth is strongest.
- Discussion (by Michael Kakuk) i.e., local government statutory authority was a revelation. Needs further discussion and debate.
- Concerning statistics, get the word out to John Q. Public.
- It really fit into the conference theme.
- This was the best use of time at the whole conference, and needed more time for this discussion.
- Mike McLane's presentation was excellent. Also Jim Carlson's. Both really focused on both problems and bold solutions.
- The stuff on the Flathead Reservation and the compact was very instructive.
- Thanks for the packet of speakers' notes, presentations, and outlines. Helpful to have the statutes.
- It was a great way to summarize what was covered and to talk about solutions.

7. What suggestions do you have for improving future conferences?

- I am beginning to think that a conference for Representatives and Senators concerning these same topics would be useful to everyone – plus some county planners to explain how difficult the subdivision laws are becoming to implement.
 - Maybe try to involve more private citizens. Was a large number of participants employed with government and/or special interests. I obviously have a special interest.
 - Get a well driller with a broader view of his/her place in the larger picture...and more comfortable at public speaking. Include a developer in the discussion. Case studies of county government efforts/watershed and conservation district efforts to do water planning and institute local policies and incentives.
 - “The problem is large subdivisions” – Matt Clifford. Is there a large subdivider willing to participate in future conferences? Or is there such animosity (i.e., frustration with government) that there is no common ground to be found.
 - The purpose wasn’t clear.
 - Ask speakers to present who are experienced with presenting. Many of the speakers had too many words on slides, not enough graphics, and went on and on. Get to the point and keep audience in mind, and leave time for questions. Invite the press. We need to reach more citizens.
 - Stay on schedule! Maybe mandate Powerpoint presentations. Mediators need to cut people off (the well guy!).
 - Involve realtors and developers. Continue along same line. Like mixed panels – allow five minutes intro – run different scenarios/issues by all of them – how do they address the issue (open sometimes having the panel members change “hats” with their fellow panel members and then have them state their perception of how their “hat” addresses the issue).
 - Start earlier first day and later the second day.
 - Keep speakers on time and have more time for dialog and questions.
 - Broader audience – more private citizens, developers, realtors.
 - Focus on the central question – problems/solutions with land use development/water, throughout the conference so the topics and presenters aren’t disjointed. Have more small groups and audience participation.
 - Shorter panels. More standup time.
 - More discussion of management methods to develop a set of recommendations to present to elected officials.
 - Tougher time keepers – so the detailed presentations don’t have to rush.
 - More diverse representation.
 - This was great. Need more realtors.
 - Pick a topic and get down to the nitty-gritty.
 - Better definition of each panel – common questions/issues to be addressed. Better task definition for break-out groups. Keep speakers on-time (this is always hard). Provide speakers’ contact information in materials.
 - More focused question for each panel to address. How do we tie all of these jurisdictions/layers/speakers together? Lots of great information, but a bit hard to digest without more upfront focus. Perhaps start with question to answer, then fit people who can answer it.
 - Adding more about the history of available water. Keep the discussion at the end.
9. What topics should be addressed if another conference is held?
- Problems and difficulties with HB 831 and subdivision statutes.

- Why is water becoming a commodity up for sale to the highest bidder? Who benefits from this?
- Water quality, watershed planning, more attention to the “solutions” speakers mentioned. They were tantalizing sound bites, and I’m sure many of us wanted to hear more.
- The economics of tying water rights to development. What are the costs? Let’s insert an element of reality here.
- More information on land use planning – case examples. More information on how other western states are confronting these challenges. Global warming – how will that affect water availability? Information on green building/xeriscaping/low-impact development solutions for conservation measures. Aquifer vulnerability studies and how that ties to water planning.
- Pharmaceuticals in water.
- What is working and why.
- Keep the Indian water right portion.
- Water conservation and recycling systems. Focus on solutions. Encourage dialog.
- How to engage a broader audience in these issues – education effort.
- Examples of solutions to do water planning and how it fits with land use (growth-policies) and zoning on a local level.
- Altering ag irrigation practices to conserve water.
- Statewide land use planning.
- Specific tools for local government. Needed legislation.
- Legislation.
- Easement, encroachments.
- Issues of future with current situation.
- Streamside setbacks, lessons from other river basins, including other states, impacts of climate change in our basin (what are options to respond).
- More on solutions, potential “to do’s” in basin – perhaps based on other regions and growth patterns/policies. Come up with ideas for draft bills/rules/etc. for policy-makers?